

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMBER M WALLERICH
Claimant

APPEAL NO. 22A-UI-06221-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT

OC: 03/29/20
Claimant: Appellant (5)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits
Fed Law PL 116-136, Sec. 2104 – Overpayment of FPUC

STATEMENT OF THE CASE:

Claimant filed an appeal from the December 9, 2021, reference 02, decision that found claimant to have been overpaid benefits. After due notice was issued, a hearing was held on April 21, 2022. The claimant did participate. The administrative law judge took notice of the administrative file.

ISSUES:

Whether the appeal is timely?
Whether claimant is overpaid FPUC benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on December 9, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 19, 2021. The appeal was not filed until March 8, 2022, which is after the date noticed on the disqualification decision. Claimant stated she did receive this decision. She stated it was received shortly after having had surgery, and as she was healing, the decision was put aside. Claimant stated that when she went back to work she had trouble filing the appeal and could not call IWD for help as she was working during the day when phones were manned. Eventually claimant filed her appeal on March 8, 2022.

The unemployment decision dated December 9, 2021 ref 01 stated claimant was overpaid \$600.00 in FPUC benefits as claimant was alleged to have been double paid FPUC benefits for the week ending July 4, 2020. An examination of the administrative file showed claimant received \$1,200.00 in FPUC benefits for the week ending July 11, 2020. Claimant was due to be paid \$600.00 in FPUC benefits for that week, but a computer error resulted in double payment. Claimant acknowledged receipt of double the normal amount into her account for the week in question.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The ten calendar days for appeal begin running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The December 9, 2021, reference 02, decision is modified with no change in effect. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant was double paid for FPUC benefits for the week ending July 11, 2022, resulting in a \$600.00 overpayment.



Blair A. Bennett
Administrative Law Judge

May 3, 2022
Decision Dated and Mailed

bab/mh

NOTE TO CLAIMANT:

- This decision determines you have been overpaid FPUC benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- You may also request a waiver of this overpayment. The written request must include the following information:
 1. Claimant name & address.
 2. Decision number/date of decision.
 3. Dollar amount of overpayment requested for waiver.
 4. Relevant facts that you feel would justify a waiver.

- The request should be sent to:

Iowa Workforce Development
Overpayment waiver request
1000 East Grand Avenue
Des Moines, IA 50319

- This Information can also be found on the Iowa Workforce Development website at: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.